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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,029	09/07/2005	Oleg Stenzel	264626US0PCT	8401
22850 7590 03/10/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER HANOR, SERENA L				
ART UNIT 1793		PAPER NUMBER		
NOTIFICATION DATE 03/10/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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jgardner@oblon.com

Office Action Summary

Application No.

10/523,029

Applicant(s)

STENZEL ET AL.

Examiner

SERENA L. HANOR

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 5-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

i. Applicant's election with traverse of Group I, claims 1-4, in the reply filed on 01/31/2008 is acknowledged. The traversal is on the ground(s) that "no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups" and that "it has not been shown that a burden exists in searching the claims of the two groups" (see Remarks filed 01/31/2008). This is not found persuasive because the application's special technical feature, a precipitated silica with a BET surface area of 178-302 m²/g, a CTAB surface area of ≥170 m²/g, a DBP number of 200-300 g/(100g), and a Sears number V₂ of 10-35 ml/ (5g), is not novel over the prior art (see written restriction requirement issued in the Office Action dated 12/31/2007) (Goerl et al., U.S. Patent No. 5,705,137).

The requirement is still deemed proper and is therefore made FINAL.

ii. Claims 5-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 01/31/2008.

Nonstatutory Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

i. Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 13 of U.S. Patent No. 6,180,076 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the precipitated silica of U.S. Patent No. 6,180,076 B1 has physical and chemical properties that fall within the ranges of those of the precipitated silica of the instant invention.

Properties	Instant Invention	6,180,076 B1
BET surface area (m ² /g)	190-302 (claim 1)	120-300 (claim 1)
CTAB surface area (m ² /g)	≥170, ≤300 (claims 1 and 2)	100-300 (claim 1)
DBP number (g/(100g))	200-300 (claim 1)	150-300 (claim 1)
Sear number V2 (ml/(5g))	10-20 (claim 1)	6-25 (claim 1)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

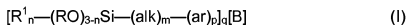
The person having ordinary skill in the art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this application reasonably reflect this level of skill.

- i. Claims 1, 2, 4 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goerl et al. (U.S. Patent No. 5,705,137).

Goerl et al. disclose a precipitated silica with the following characteristics (col. 2 lines 12-22 and 33-54, col. 7 lines 46-59, *Applicants' claims 1, 2 and 21-25*):

BET surface area	35-350 m ² /g, 275, 290
CTAB surface area	200-400 m ² /g
DBP number	230-380 g/(100g)
Sears number V ₂	20-30 ml.

Furthermore, precipitated silicas may have their surfaces modified by the following organosilanes (col. 3, *Applicants' claim 4*):



wherein:

B: -SCN, -SH, -Cl, -NH₂ (if q=1), or -Sx--(if q=2),

R and R¹: an alkyl group with 1 to 4 carbon atoms or a phenyl group, wherein all R and R¹ groups may be identical or different,

n: 0, 1, or 2,

alk: a divalent straight-chain or branched hydrocarbon group with 1 to 6 carbon atoms,

m: 0 or 1,

ar: an arylene group with 6 to 12 C atoms, preferably 6 C atoms,

p: 0 or 1, with the proviso that p and n are not simultaneously 0,

x: a number from 2 to 8,

alkyl: a monovalent straight-chain or branched saturated hydrocarbon group with 1 to 20 carbon atoms, preferably 2 to 8 carbon atoms,

alkenyl: a monovalent straight-chain or branched unsaturated hydrocarbon group with 2 to 20 carbon atoms, preferably 2 to 8 carbon atoms.

Goerl et al. differs from the instant application in that the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number overlap and/or lie in the ranges of those of the instant application.

It would have obvious to one of ordinary skill in the art at the time of the invention **to have modified** the silica of Goerl et al. *by adjusting the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number* (col. 2 lines 12-22 and 33-54, col. 7 lines 46-59), as per Applicants' claims 1, 2 and 21-25, **because** in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). Furthermore, "[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a prima facie case of obviousness." *In re Peterson*, 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). See MPEP 2144.05 [R-5]. Furthermore, a patent's disclosure is not limited to its examples or preferred embodiments. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems which with they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re*

Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See MPEP 2123 [R-5].

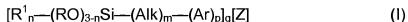
ii. Claims 1-4 and 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhrlandt et al (U.S. Patent No. 6,180,076 B1).

Uhrlandt et al. is drawn to a precipitated silica with the following physical and chemical properties (col. 1 lines 40-50, col. 2 lines 5-15 and lines 25-34, col. 3 lines 45-49, col. 6 lines 15-52, col. 9 Example 8 Product name KS ex. 5, *Applicants' claims 1-3 and 21-28*):

BET surface area	200-300 m ² /g
CTAB surface area	100-300 m ² /g
DBP number	150-300 g/(100g)
Sears number V ₂	6-25 ml (consumption of 0.1 N NaOH)
WK coefficient	<3.4, preferably <2.5
Degraded particle size	<1.0 μm
Non-degraded particle size	1.0-100 μm.

The precipitated silica is modified with organosilanes of the formulae I to III (col. 3-4,

Applicants' claim 4):



wherein:

Z: -SCN, -SH, -Cl, -NH₂ (if q=1), or -Sx--(if q=2),

R and R¹: an alkyl group having 1 to 4 carbon atoms, the phenyl radical, wherein all the radicals R and R¹ can each have the same or a different meaning,

R: a C₁-C₄ -alkyl, C₁-C₄ -alkoxy group,

n: 0, 1, or 2,

Alk: a divalent straight-chain or branched hydrocarbon radical having 1 to 6 carbon atoms,

m: 0 or 1,

Ar: an arylene radical having 6 to 12 C atoms, preferably 6 C atoms,

p: 0 or 1, with the proviso that p and n do not simultaneously denote 0,

x: a number from 2 to 8,

alkyl: a monovalent straight-chain or branched unsaturated hydrocarbon radical having 1 to 20 carbon atoms, preferably 2 to 8 carbon atoms,

alkenyl: a monovalent straight-chain or branched unsaturated hydrocarbon radical having 2 to 20 carbon atoms, preferably 2 to 8 carbon atoms.

Urhlant et al. differs from the instant application in that the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number overlap and/or lie in the ranges of those of the instant application.

It would have obvious to one of ordinary skill in the art at the time of the invention **to have modified** the silica of Urhlant et al. *by adjusting the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number* (col. 1 lines 40-50, col. 2 lines 5-15 and lines 25-34, col. 6 lines 15-52, col. 9 Example 8 Product name

KS ex. 5), as per Applicants' claims 1, 2 and 21-25, **because** in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). Furthermore, "[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a prima facie case of obviousness." *In re Peterson*, 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). See MPEP 2144.05 [R-5]. Furthermore, a patent's disclosure is not limited to its examples or preferred embodiments. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems which with they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See MPEP 2123 [R-5].

iii. Claims 1, 2 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindner et al. (U.S. Pre-Grant Publication 2003/0003040 A1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Lindner et al. discloses a precipitated silica with the following characteristics (p. 2 [0027-0033], claims 1 and 4, *Applicants' claims 1, 2 and 21-25*):

BET surface area	100-300 m ² /g
CTAB surface area	100-250 m ² /g
DBP number	100-450 g/(100g)
Sears number V ₂	20-45 ml.

Lindner et al. differs from the instant application in that the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number overlap and/or lie in the ranges of those of the instant application.

It would have obvious to one of ordinary skill in the art at the time of the invention **to have modified** the silica of Lindner et al. *by adjusting the ranges of the BET surface area, the CTAB surface area, the DBP number, and the Sears number* (p. 2 [0027-0031], claims 1 and 4), as per Applicants' claims 1, 2 and 21-25, **because** in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990). Furthermore, "[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a prima facie case of obviousness." *In re Peterson*, 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). See MPEP 2144.05 [R-5].

Response to Arguments

Applicant's arguments filed 1/15/2009 have been fully considered but they are not persuasive.

i. *Applicant traverses the rejection of claims 1-4 and 21-28 under 35 U.S.C. 102(b) as anticipated by Uhrlandt et al. because the overlapping of ranges, is not determinative, and that once a prima facie case of obviousness is made, such a case may be overcome by comparing to the closest prior art. The newly-submitted Wehmeier Declaration declares that the closest prior art to the presently-claimed invention in Uhrlandt et al. is Example 4 therein. Applicants have clearly shown in the first Wehmeier Declaration that an embodiment of the present invention, i.e., Example 1, has superior high-temperature tear resistance to Example 4 of Uhrlandt et al. In addition, the newly-submitted second Wehmeier Declaration shows two additional examples within the terms of the present claims, i.e., Examples 1A and 1B, which together with the data in the first Wehmeier Declaration, establishes a trend that by operating within the full scope of the present invention, superior high-temperature tear resistance to Uhrlandt et al. is established.*

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., superior high-temperature tear resistance of a tire which comprises a precipitated silica) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The intended

use of the precipitated silicas carries no patentable weight. There is no mention of tires in the claims (the claims that do present a tire have been withdrawn and the restriction requirement has been made final).

With regards to the newly-submitted Wehmeier Declaration providing new Examples 1A and 1B, said 1.132 Declaration has been considered. However, no critical distinction has been shown between the parameters listed in Table D on p. 4 of the Declaration in comparing the examples of Uhrlandt et al. to Examples 1A and 1B of the present invention. For example, the Median Die C values of Example 4 of Uhrlandt et al. and Example 1A are similar. The fact that the high-temperature tearing resistance of the Examples 1A and 1B are higher than that of the silica of Example 4 of Uhrlandt et al. is irrelevant because, said property is not claimed. Because the properties of the disclosed precipitated silicas of Uhrlandt et al. overlap those of the instant invention, i.e., Uhrlandt et al. presents a *prima facie* case of obviousness. Furthermore, a patent's disclosure is not limited to its examples. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems which with they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See MPEP 2123 [R-5]. The prior art of record discloses and/or suggests the ranges claimed by the

Applicants. One skilled in the art could have reasonably selected and optimized the claimed properties from the prior art to make the instant invention.

ii. *Applicant argues that the Sears number range of 20-30 of Goerl et al. only incidentally touches the presently-recited maximum of 20, and that the examples and therefore preferred embodiments of Goerl et al. all have Sears numbers greater than 20. Applicant further cites Ex parte Humber.*

In response to applicant's argument that the Sears numbers of the examples and preferred embodiments of Goerl et al. are greater than the instantly claimed maximum of 20, it is noted that a patent's disclosure is not limited to its examples. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems which with they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See MPEP 2123 [R-5]. Furthermore, while the examples of Goerl et al. have Sears numbers that are greater than 20, Goerl et al. disclose a Sears number of 20 or greater (col. 2 lines 12-22 and 33-54 of U.S. Patent No. 5,705,137), which overlaps and/or lies with the ranges of the instant invention. Therefore, Goerl et al. present a *prima facie* case of obviousness.

Examiner is unclear how *Ex parte Humber* relates to the instant case, as it is about the effect of certain chlorination sites on a neuroleptic compound. With regards to

the unexpected results demonstrated over Uhrlandt et al., which can be extrapolated to the less pertinent prior art of Goerl et al., said results are based on an intended use of a precipitated silica with certain physico-chemical properties. Said properties are entirely within the scope of both Uhrlandt et al. and Goerl et al.

iii. *Applicants argue that the silica of Lindner et al. must have a Sears number greater than 20.*

In response to applicant's argument that the Sears numbers of the examples and preferred embodiments of Lindner et al. are greater than the instantly claimed maximum of 20, it is noted that Lindner et al. disclose that the Sears number **may** be greater than 20, but that they claim a Sears number of 20-45 (p. 2 [0033], p. 5 claim 4). A patent's disclosure is not limited to its examples or preferred embodiments. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems which with they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. See MPEP 2123 [R-5].

Examiner is unclear how *Ex parte Humber* relates to the instant case, as it is about the effect of certain chlorination sites on a neuroleptic compound. With regards to the unexpected results demonstrated over Uhrlandt et al., which can be extrapolated to the less pertinent prior art of Lindner et al., said results are based on an intended use of

a precipitated silica with certain physico-chemical properties. Said properties are entirely within the scope of both Uhrlandt et al. and Lindner et al.

iv. Applicants traverse the rejection on the ground of non-statutory obviousness-type double patenting over Urhlandt et al. because the disclosure of Urhlandt et al. is irrelevant to the instant invention.

In addition to the fact that the disclosure of Urhlandt et al. is relevant to the instant invention, the instant claims 1-4 are not patentably distinct from claims 1 and 13 of Uhrlandt et al. As has already been shown, Urhlandt et al. presents a case of *prima facie* case of obviousness over the instant invention.

Conclusion

Claims 1-4 and 21-28 have been rejected.

Claims 5-20 are withdrawn as being drawn to a non-elected invention. The Restriction Requirement was made final in the Office Action dated 4/18/2008 and is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SERENA L. HANOR whose telephone number is (571)270-3593. The examiner can normally be reached on Monday - Thursday 8:00 AM - 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SLH

/Timothy C Vanoy/

Primary Examiner, Art Unit 1793